

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

76-2049

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 76-2049

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NATHANIEL WILLIAMS,

Appellant,

-against-

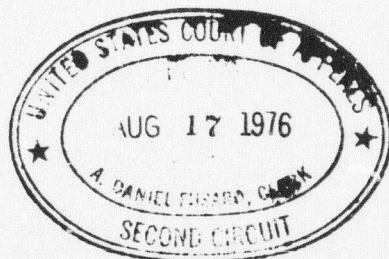
PETER PREISER, Commissioner of
Correction of the State of New
York; J. EDWIN LA VALLEE,
Superintendent of Clinton
Correctional Facility; and
DR. F. STANLEY HOFFMEISTER,
1465 Western Avenue, Albany,
New York,

Appellees.
----- x

Appeal from an Order and Judgment
of the United States District Court
for the Northern District of New York

BRIEF AND APPENDIX OF APPELLANT

JEFFREY IRA ZUCKERMAN
Attorney for Appellant
48 Wall Street
New York, New York 10005
(212) 952-8100



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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 76-2049

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NATHANIEL WILLIAMS,	:
Appellant,	:
-against-	:
PETER PREISER, Commissioner of	:
Correction of the State of New	:
York; J. EDWIN LA VALLEE,	:
Superintendent of Clinton	:
Correctional Facility; and	:
DR. F. STANLEY HOFFMEISTER,	:
1465 Western Avenue, Albany,	:
New York,	:
Appellees.	:

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Appeal from an Order and Judgment
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JEFFREY IRA ZUCKERMAN
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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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NATHANIEL WILLIAMS, :

Appellant, :

-against- :

PETER PREISER, Commissioner of :
Correction of the State of New :
York; J. EDWIN LA VALLEE, :
Superintendent of Clinton :
Correctional Facility; and :
DR. F. STANLEY HOFFMEISTER, :
1465 Western Avenue, Albany, :
New York, :

Appellees. :

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BRIEF AND APPENDIX OF APPELLANT

PRELIMINARY STATEMENT

This is an appeal from a memorandum-decision and order of the United States District Court for the Northern District of New York, Hon. Edmund Port, D.J., dated January 29, 1976 (Docket No. 75-CV-529), granting summary judgment

in favor of the defendants and dismissing the pro se complaint in this civil rights action for damages, brought pursuant to 42 U.S.C. §§ 1981, 1983 and 1985(3). A copy of the docket entries of the District Court is Appendix ("App.") A. A copy of the unreported memorandum-decision and order of the District Court is App. G.

STATEMENT OF THE ISSUE
PRESENTED FOR REVIEW

Should a prisoner's pro se complaint, alleging a violation of his civil rights, be dismissed on a motion for summary judgment where there exist genuine issues as to material facts?

STATEMENT OF THE CASE

This is a civil rights action brought pursuant to 42 U.S.C. §§ 1981, 1983 and 1985(3). Plaintiff, who initiated this action pro se, seeks to recover damages of \$250,000 from the three defendants (the former New York State Commissioner of Correctional Services, the Superintendent of Clinton Correctional Facility and a doctor who is a part-time employee of the New York State Department of Correctional Services) on the grounds that (1) they have failed to provide him with necessary medical care during his incarceration in a New York State prison, and (2) they deliberately withheld such

DATE | NR. | PROCEEDINGS

medical treatment from him in an effort to force him to drop lawsuits he had previously brought against various prison officials, including two of the defendants in this action. The defendants moved for summary judgment, submitting in support of their motion an affidavit by the doctor and an affidavit by an Assistant Attorney General. Plaintiff responded with a handwritten affidavit of his own. Although these affidavits and the verified complaint certainly evidenced the existence of disputed material facts, the District Court nonetheless granted the defendants' motion. This appeal followed. A more complete statement of the facts relevant to the issue presented for review follows.

On September 4, 1969, while incarcerated at the Green Haven Correctional Facility, plaintiff, Mr. Nathaniel Williams, was assaulted by a fellow inmate who was wielding a broken jar. The assailant cut off substantially all of Mr. Williams' right ear. A prison doctor sewed up the stump of Mr. Williams' ear, but refused even to attempt to suture the severed portion of his ear back on. Mr. Williams was then sent to solitary confinement for three weeks, without being given any medication. He subsequently brought an action alleging that this "medical treatment" constituted a violation of his civil rights. The District Court for the Southern District of New York dismissed that

action, but this Court ultimately ruled that the complaint stated a cause of action under 42 U.S.C. § 1983 and remanded the case to the District Court for further proceedings. Williams v. Vincent, 508 F.2d 541 (2d Cir. 1974).

Subsequent to the initial "treatment" of Mr. Williams' injury, a number of different doctors performed a series of nine operations designed to reconstruct the severed ear through plastic surgery. The first operation in the series was performed in November 1970 and the last in February 1974. The last operation was performed by one of the defendants here, Dr. F. Stanley Hoffmeister. (App. E, pp. 14a-15a.)

On June 12, 1974, Dr. Hoffmeister interviewed plaintiff at Clinton Correctional Facility, where Mr. Williams was then and is now incarcerated, and told Mr. Williams that two more operations were necessary to complete the reconstructive surgery. Mr. Williams told Dr. Hoffmeister that he was going to New York City for an appearance before the New York State Supreme Court, New York County. Dr. Hoffmeister then directed the prison hospital secretary to give a letter to Mr. Williams for him to give to the judge in New York to ensure his return to Clinton. (App. B, p. 4A.) That letter, dated June 12, 1974, stated:

"To: Whom it May Concern
Re: Nathaniel Williams
Clinton #44849

"The above mentioned has had past surgical procedures for reconstruction of his right ear. He is still in need of further surgical procedures to finish the reconstructive surgery on his ear." (This letter is quoted in full text in the verified complaint, App. B, p. 5a.)

After his court appearance in New York, plaintiff returned to Clinton and Dr. Hoffmeister scheduled him for surgery on July 31, 1974. On that day, the doctor prepared Mr. Williams for surgery but then refused to proceed. Instead, Dr. Hoffmeister told Mr. Williams that no further surgery would be performed unless Mr. Williams dropped the claims he had previously filed against a number of prison officials and which were then pending in various courts. (App. B, p. 5a.)

Plaintiff appealed Dr. Hoffmeister's decision to defendants J. Edwin LaVallee, then and now Superintendent of Clinton Correctional Facility, and Peter Preiser, then Commissioner of Correctional Services of the State of New York, but each of them refused to direct Dr. Hoffmeister, or any other doctor, to perform the previously scheduled and still necessary surgery.

Mr. Williams commenced this action by sending a handwritten, pro se, verified complaint to the Clerk of the

District Court, who received it on October 17, 1975. On November 4 Judge Port ruled that the complaint was sufficient to require its filing and granted leave for Mr. Williams to proceed in forma pauperis. The complaint was formally filed on the next day.

Without filing an answer, on January 7, 1976, the defendants moved for summary judgment in their favor "on the ground that the action has no merit." (The Notice of Motion and Motion for Summary Judgment in Favor of Defendants is App. C.) The only supporting papers filed by the defendants with their motion were affidavits by Timothy F. O'Brien, Esq., an Assistant Attorney General (App. D), and Dr. Hoffmeister (App. E).

Mr. O'Brien's affidavit was basically, and quite improperly, a memorandum of law. It also had attached to it a letter, dated August 9, 1974, from Dr. Hoffmeister to Dr. Ian T. Loudon, then Assistant Commissioner for Health Services in the New York State Department of Correctional Services, in which Dr. Hoffmeister wrote that he had examined Mr. Williams on July 31 but felt "that no further surgery is indicated." (App. D., p. 12a.) Nothing in that letter suggests any explanation for why Dr. Hoffmeister changed his mind concerning the necessity for further surgery on Mr. Williams' ear between June 12 and August 9.

Dr. Hoffmeister's affidavit listed the nine operations performed prior to March 1974, stated Dr. Hoffmeister's then "opinion that the reconstruction of Mr. Williams [sic] right ear is excellent and that no further surgery, medical care or treatment is indicated or required", and denied that Dr. Hoffmeister "told plaintiff that he would not get any more surgery done unless he dropped his claims pending in the courts against prison official." (App. E, p. 15a.) Neither Dr. Hoffmeister nor Mr. O'Brien denied that on June 12, 1974, Dr. Hoffmeister told Mr. Williams that two further operations were necessary, or that on July 31, 1974, Dr. Hoffmeister prepared Mr Williams for surgery, or that Messrs. LaVallee and Preiser upheld Dr. Hoffmeister's refusal to provide the surgical care he had previously said was necessary.

Defendants' motion was returnable on January 26, 1976. On January 21 an answering affidavit by Mr. Williams, sworn to on January 15, 1976, was filed with the District Court. (A copy of that affidavit is App. F.) In his affidavit Mr. Williams reiterated his previous sworn allegations that Dr. Hoffmeister originally had said that further surgery on Mr. Williams' ear was necessary, and had even prepared Mr. Williams for surgery, but then refused to proceed unless plaintiff dropped his pending legal claims. (App. F, p. 21a.)

On January 29 Judge Port granted the defendants' motion for summary judgment. Despite the filing of Mr. Williams' affidavit on January 21, Judge Port wrote that "the plaintiff has to date failed to submit any papers or affidavits in opposition to the motion." (App. G, pp. 23a-24a.) Later in its opinion, the Court repeated, incorrectly, that "the plaintiff has failed to controvert the allegations made in Dr. Hoffmeister's affidavit and has failed to oppose this motion for summary judgment." (App. G, p. 25a.) The Court tacitly recognized that the complaint stated a claim, but concluded:

"The allegations of the complaint will not serve to raise an issue in the face of the factual allegations submitted in support of the motion. [Citations omitted.] The movants' uncontradicted affidavits show there are no genuine issues as to any material facts." (App. G, p. 25a.)

Judgment was entered in favor of the defendants on February 3.

On May 7 this Court granted Mr. Williams' pro se motion for leave to proceed in forma pauperis and for the assignment of counsel. Counsel was assigned on May 18.

ARGUMENT

SUMMARY JUDGMENT WAS IMPROPERLY GRANTED BY THE DISTRICT COURT BECAUSE THERE EXIST GENUINE ISSUES AS TO MATERIAL FACTS AND THE DEFENDANTS THEREFORE ARE NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW.

It is axiomatic that "summary judgment cannot be granted unless there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Carter v. Stanton, 405 U.S. 669, 671 (1972); Fed. R. Civ. P. 56(c); 6 Moore's Federal Practice ¶ 56.15 (2d ed. 1976) and cases cited therein. As the instant action involves genuine issues as to material facts, summary judgment should not have been granted.

Plaintiff has sworn twice, first in his verified complaint (App. B, pp. 4a-5a) and again in his affidavit replying to the defendants' motion for summary judgment (App. F, p. 21a), that Dr. Hoffmeister said on June 12, 1974, that further plastic surgery upon Mr. Williams' ear was necessary, and even prepared plaintiff for surgery on July 31, but then refused to perform such surgery unless plaintiff dropped his various pending legal claims against assorted

prison officials.* In his affidavit, Dr. Hoffmeister denied that he "told plaintiff that he would not get any more surgery done unless he dropped his claims pending in the courts against prison officials." Significantly, Dr. Hoffmeister never denied Mr. Williams' allegations that the doctor (1) on June 12, 1974 dictated a letter stating that plaintiff required further surgery, (2) scheduled

* A bit of confusion was introduced into the record by Judge Port's statements, in his memorandum-decision and order granting summary judgment, that, "[t]he plaintiff has to date failed to submit any papers or affidavits in opposition to the motion" (App. G, pp. 23a-24a) and "[a]s noted earlier herein, the plaintiff has failed to controvert the allegations made in Dr. Hoffmeister's affidavit and has failed to oppose this motion for summary judgment." (App. G, p. 25a.) Although Judge Port may not have been aware of Mr. Williams' affidavit, his opinion cannot negative the docket entry (App. A, p. 2) and the Court Clerk's stamp on Mr. Williams' affidavit (App. F, p. 22a), both of which show that plaintiff's affidavit was filed on January 21, 1976, eight days before the Court rendered its decision.

Moreover, even if Mr. Williams had not submitted an affidavit in opposition to the defendants' motion, summary judgment still would have been inappropriate because, contrary to the holding of the District Court, a verified complaint, where verification of a pleading is not required by statute or rule, should be regarded as an affidavit, and the verified complaint here, by itself, demonstrated the existence of disputed issues of material facts. Runnels v. Rosendale, 499 F.2d 733, 734 n.1 (9th Cir. 1974); Khan v. Garanzini, 411 F.2d 210, 212 (6th Cir. 1969); Fletcher v. Norfolk Newspapers, Inc., 239 F.2d 169 (4th Cir. 1956); Albert Dickinson Co. v. Mellos Peanut Co., 179 F.2d 265, 268 (7th Cir. 1950); 6 Moore's Federal Practice, ¶ 56.11[3] at 56-250-251 (2d ed. 1976).

Mr. Williams for surgery on July 31, 1974, and (3) even prepared plaintiff for surgery on that day, but then suddenly refused to perform the scheduled operation.

Two issues of fact are evident from the affidavits, each of which is material to the governing principles of law. First, plaintiff alleged that Dr. Hoffmeister actually believed further surgery was necessary, as stated in the June 12, 1974 letter, and scheduled and prepared Mr. Williams for surgery on July 31, but then suddenly refused to perform the necessary operation. If so, there was not a mere difference of opinion as to a medical judgment, but rather "deliberate indifference" to Mr. Williams' medical needs, giving rise to a cause of action under 42 U.S.C. § 1983. Bishop v. Stoneman, 508 F.2d 1224, 1226 (2d Cir. 1974); Williams v. Vincent, *supra*, 508 F.2d 544 (2d Cir. 1974); Corby v. Conboy, 457 F.2d 251, 254 (2d Cir. 1972); Martinez v. Mancusi, 443 F.2d 921, 924 (2d Cir. 1970). See also United States ex rel. Hyde v. McGinnis, 429 F.2d 864, 867 (2d Cir. 1970) (relief available under § 1983 in instances "characterized by a willful refusal to treat a known ailment"); cf. Haines v. Kerner, 404 U.S. 519 (1972). At the time when summary judgment was granted, the record with respect to these facts consisted only of Mr. Williams' allegations, without any response, let alone a denial, by the doctor or anyone else. Surely then, summary judgment was inappropriate.

Secondly, it is keenly disputed as to whether Dr. Hoffmeister refused to perform surgery upon Mr. Williams in an effort to dissuade him from pursuing his lawsuits against prison officials, and whether Messrs. Preiser and LaVallee joined in that stand. If so, Mr. Williams would have a cause of action under § 1983. As the Supreme Court has held, "[I]t is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed." Johnson v. Avery, 393 U.S. 483, 485 (1969). See also Gilmore v. Lynch, 319 F. Supp 105, 109 (N.D. Cal. 1970) ("[r]easonable access to the courts is a constitutional imperative"), aff'd sub nom. Younger v. Gilmore, 404 U.S. 15 (1971). In Williams v. Vincent, supra, 508 F.2d at 545, n. 9, this Court held that evidence that a prisoner

"was committed to solitary confinement to dissuade him from bringing a suit against the State would clearly state a claim under section 1983."

Accord, e.g., Corby v. Conboy, supra, 457 F.2d at 253-254; Sostre v. McGinnis, 442 F.2d 178, 189 (2d Cir. 1971), cert. denied sub nom. Oswald v. Sostre, 405 U.S. 978 (1972).

It would be hard to imagine a more barbaric method for dissuading a prisoner from exercising his constitutional right to approach the courts than to withhold from that

prisoner medical treatment he requires. In the case at bar, plaintiff has sworn twice that this is what happened, and one of the three defendants has denied it. This is a classic example of a disputed issue of fact, requiring for its resolution the illuminating effect of live testimony subject to cross-examination. In other words, it is precisely the situation which ought not, and may not, be disposed of through summary judgment.

CONCLUSION

For the foregoing reasons, the order and judgment of the District Court, granting summary judgment for the defendants, should be reversed and the case should be remanded to that Court for trial.

Respectfully submitted,

JEFFREY IRA ZUCKERMAN
Attorney for Appellant
48 Wall Street
New York, New York 10005
(212) 952-8100

Dated: New York, New York
August 16, 1976

APPENDIX

A

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PLAINTIFFS

DEFENDANTS

| Williams, Nathaniel

| Preiser, Peter, Commissioner of Correction of the State of New York
J. Edwin La Vallee, Superintendent of Clinton Correctional Facility;
and DR. F. STANLEY HOFFMEISTER, 1465 Western Avenue, Albany, New York

CAUSE Plaintiff claims he is being denied needed medical treatment for a so-called "complete head and ear Surgery

75-CV-529

ATTORNEYS

Nathaniel Williams, #44849
Box B
Bannemora, N.Y.

Louis J. Lefkowitz, Attorney General
State of New York
Albany, N. Y.
Timothy F. O'Brien, Asst. Attn. General

<input checked="" type="checkbox"/> CHECK HERE CASE WAS FILED IN RMA SUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
				JS-5	
				JS-6	

DATE 1975	NR.	PROCEEDINGS
Nov. 5	1	Filed civil rights complaint
Nov. 5	2	Filed Memorandum-Decision and Order of Judge Port (11/4/75) granting leave to proceed in forma pauperis and directing the Clerk to file the complaint without payment of fees. The Clerk is also directed to issue summons to be served on all defendants and also to be mail to Timothy F. O'Brien, Asst. Attorney General
Nov. 5		Issued summons-orig. & 4 copies & delivered 3 copies to the marshal for service and mailed one copy to Timothy F. O'Brien, Asst. Attorney General
Nov. 25	3	Filed summons served 11/24/75 on Dr. Stanley Hoffmeister, unserved on Peter Preiser, served 11/12/75 on J. Edwin LaVallee through Rodney Moody, Head Clerk
Nov. 26	4	Filed copy of request for extension of time to answer
Nov. 28	5	Filed application & order extending time to file an answer to December 23, 1975
Dec. 17	6	Filed copy of letter to Judge Port from Asst. Atty. General Timothy F. O'Brien requesting extension of time to answer
Dec. 22	7	Filed application by N. Y. State Atty. Gen. for extension of time to answer & Order of Judge Port granting same to Jan. 12, 1976
Jan. 9	8	Filed Notice of Motion and Motion for Summary Judgment in Favor of Defendants, returnable Jan. 26, 1976 at Utica, Affidavit of Timothy F. O'Brien & Affidavit of F. Stanley Hoffmeister
Jan. 21	9	Filed Affidavit of Nathaniel Williams in Reply to State of New Yorks Affidavit.
Jan. 26		Motion for Summary Judgment to be submitted on papers served
Feb. 3	10	Filed Memorandum-Decision and Order of Judge Port (1/29/76) granting defendant's motion for summary judgment and directing that judgment be entered in favor of the defendants dismissing the complaint
Feb. 3	11	Filed Judgment & mailed cards re: Judgment to Nathaniel Williams and Hon. Louis J. Lefkowitz, Attorney General, Attn: Timothy F. O'Brien, Asst. Attorney General
Apr. 20	12	Filed receipt for papers sent to C.C.A.

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Nathaniel Williams
Plaintiff

Civil
Rights Complaint

against

Walter Brice, Commissioner of
Correction of the State of New York,
J. Edwin Sandeen, Superintendent,
Clinton Correctional Facility; and
Dr. F. Stanley Hoffmeister,
1165 Western Avenue, Albany, N.Y.

Defendants

State of New York } ss:
County of Clinton }

Sir:

Nathaniel Williams, is the plaintiff in the above entitled action and respectfully alleges for his Civil Rights Complaint. That this action arises under the Constitution of the United States, in particular the 8th and 14th Amendments thereto, and under Title 28 U.S.C. Sections 2201 and 2241, 1331, 1343 (3). Also Section 1339 and Title 42 U.S.C. Section 1981, 1983, 1985 subd. (3). The jurisdiction of the Court is invoked under Title 28 U.S.C. Sections 1331, 1343 (3). 2201 and 2241 also Title 42 U.S.C. Sections 1981, 1983, 1985 subd. (3). and under the 8th and 14th Amendments of the United States Constitution.

The matter is controversial, exclusive of interest and costs exceeds the sum of \$10,000 dollars.

That your Plaintiff is a Citizen of the United States residing in the State of New York, as a prisoner confined in Clinton Correctional Facility, serving an indeterminate term of 10 to 20 years upon conviction of the Supreme Court of New York County.

Plaintiff contends that he is suing Peter Puccio, Commissioner; J. Edwin Favallo, Superintendent and Dr. F. Stanley Hoffmeister, for damages of \$250,000 for failure to provide medical care needed by plaintiff after a large hole was put in the side of his head during surgery at Clinton prison, when Cartridge was taken from the side of his head when he was put to sleep without knowing to rebuild his ear, and after the first surgery he was told by the first doctor who did the surgery that he would receive a complete head and ear surgery before he leaves Clinton prison, but the above named defendants had denied him of his right to have his head and ear surgery be completed, which constituted cruel and unusual punishment and punishment without due process of law, after he was transferred to Clinton prison, because he got hurt in Green Haven prison.

In addition, plaintiff will further attempt to show this Court deprivation of his Constitutional rights by the above named defendants, because Dr. Hoffmeister was allowed to come to the Clinton prison and interviewed plaintiff four months ago at the prison hospital and told plaintiff that he needed two more ear plastic surgery to complete the surgery and plaintiff told Dr. Hoffmeister, during that time that he was going back to the New York City Supreme Court, on his case and Dr. Hoffmeister, told the Clinton prison, hospital secretary to type out a letter for plaintiff to give the New York City judge to have plaintiff return back to the Clinton prison, for his surgery be completed. Show enough the prison, hospital secretary gave plaintiff the letter on June 12, 1974, to take to the judge on July 11, 1974, which a copy of the letter is below.

To Whom it may Concern
 Rev. Nathaniel Williams
 Clinton #44849

The above mentioned has had past surgical procedures for reconstruction of his right ear. He is still in need of further surgical procedures to finish the reconstructive surgery on his ear. In addition Dr. Hoffmeister, told plaintiff on July 31, 1974, that he would not get any more surgeries done not until he drop his claims pending in the courts against prison officials. Furthermore, plaintiff will also attempt to show this court that he was further deprivation of his right to receive a completed surgery when he was sent back to Clinton prison from the New York City Supreme Court in July 1974, because Dr. Hoffmeister, had immediately scheduled plaintiff for his surgery at the Clinton prison hospital on July 31, 1974, and got plaintiff ready for his surgery and about 10 minutes later Dr. Hoffmeister, told plaintiff that he ain't got time to do plaintiff surgery and threaten plaintiff he will send letters to the office of Peter Preiser, Commissioner and J. Edwin Savalle, Superintendent, stating that plaintiff do not need any more surgery. Show enough Dr. Hoffmeister, in August 1974, did sent a letter back to Clinton prison, only to denied plaintiff of his surgery, and the Commissioner, Peter Preiser, and J. Edwin Savalle, Superintendent, ruled in favor of Dr. Hoffmeister, so that ~~no~~ other doctor would completed plaintiff surgery needed while plaintiff is incarcerated in prison, which this procedure by all defendants herein constituted cruel and unusual punishment and punishment without due process of law.

Further, each defendant is sued individually and in his official capacity. At all times mentioned in this Complaint each defendant acted under the color of state law.

In addition, it is well established now that local law enforcement officers who act under color of law and who use excessive force in the enforcement of state laws are subject to civil liability under 42 U.S.C. 1983, as thereby the above defendants deprive Plaintiff of his rights guaranteed by the Constitution and laws of the United States.

Wherefore, it is respectfully requested that Plaintiff's Complaint be granted.

Sworn to before me
this 23 day of May 1975

LEWIS G. BRIGGS
Notary Public
Clinton Co., State of N. Y.
Commission Expires March 30, 1977

Thom D. Bryan
Notary Public

Respectfully Submitted
Nathaniel Williams
Plaintiff, pro se #44549
Box 13, Dannemora, N.Y.

c

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NATHANIEL WILLIAMS,

Plaintiff,

-against-

PETER PREISER, Commissioner of Correction of
the State of New York; J. EDWIN LA VALLEE,
Superintendent of Clinton Correctional
Facility; and DR. F. STANLEY HOFFMEISTER,
1465 Western Avenue, Albany, New York,

Defendants.

NOTICE OF MOTION
AND MOTION FOR
SUMMARY JUDGMENT
IN FAVOR OF
DEFENDANTS

Civil Action
File No. 75
CV 529

S I R:

PLEASE TAKE NOTICE that on January 26, 1976 at 10 A.M.
or as soon thereafter as counsel can be heard, Peter Preiser,
former Commissioner of Correctional Services of the State of
New York, J. Edwin LaVallee, Superintendent of Clinton Correc-
tional Facility and Dr. F. Stanley Hoffmeister, defendants in
the above-captioned matter, will move this Court at the U.S.
Court House, Syracuse, New York, as follows:

For an order entering summary judgment in favor of the
defendants and against the plaintiff.

This motion is made on the ground that the action has
no merit.

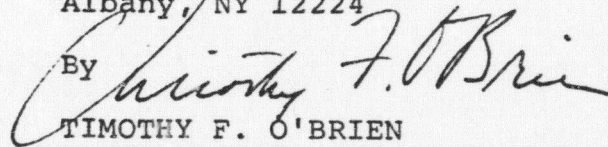
This motion is based on this notice, the complaint, the
affidavits of Timothy F. O'Brien, Assistant Attorney General
and Dr. F. Stanley Hoffmeister, attached as Exhibits "A" and

"B", respectively, the statement of reasons and memorandum of points and authorities in support of this motion.

Dated: January 7, 1976

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
The Capitol
Albany, NY 12224

By



TIMOTHY F. O'BRIEN
Assistant Attorney General

TO: NATHANIEL WILLIAMS, #44849
Plaintiff Pro Se
Box B
Dannemora, NY 12929

D

D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NATHANIEL WILLIAMS,

Plaintiff,

-against-

PETER PREISER, Commissioner of Correction of
the State of New York; J. EDWIN LA VALLEE,
Superintendent of Clinton Correctional
Facility; and DR. F. STANLEY HOFFMEISTER,
1465 Western Avenue, Albany, New York,

AFFIDAVIT

75 CV 529

Defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

TIMOTHY F. O'BRIEN, being duly sworn, deposes and
says:

1. That he is an Assistant Attorney General on the
staff of the Honorable Louis J. Lefkowitz, Attorney General
of the State of New York, attorney for the defendants in this
action and that he submits this affidavit in support of a
motion for summary judgment on behalf of the defendants in
this action.

2. That your deponent respectfully urges that the
defendants are entitled to summary judgment against the
plaintiff herein since it clearly appears from the affidavit
of Dr. Hoffmeister that the plaintiff has not been denied needed
medical treatment, but on the contrary, has been the recipient
of nine surgical operations involving plastic surgery for the
purpose of reconstructing plaintiff's right external ear.

3. That it further appears from a letter from defendant Hoffmeister to Dr. Ian T. Loudon, Assistant Commissioner for Health Services of the Department of Correctional Services, dated August 9, 1974 (copy of which is attached hereto and made a part hereof and designated Attachment #1 to this affidavit) plaintiff was examined by defendant Hoffmeister on July 31, 1974 and a medical conclusion was made by defendant Hoffmeister that the reconstruction of plaintiff's ear was excellent and that no further surgery is indicated.

4. That defendants Preiser and LaVallee under the circumstances had a right to rely on the judgment of Dr. Hoffmeister as set forth in his letter to Dr. Loudon that no further medical treatment for plaintiff was indicated and therefore, the complaint against Commissioner Preiser and Superintendent LaVallee should be dismissed since the premise upon which the action against these two defendants is faulty, the conclusion must fall as well. (See U.S. ex rel. Hyde v. McGinnis, 429 F.2d 864, 868 [2d Cir., 1970]).

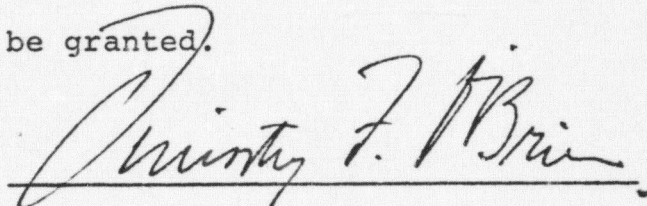
5. That the plaintiff's allegation that Dr. Hoffmeister told plaintiff that he would not perform any further surgery upon plaintiff unless plaintiff dropped his claims pending in the courts against prison officials is not only emphatically denied by the defendant Hoffmeister in his affidavit, but it is frivolous when the facts show that the plaintiff had been operated on for the reconstruction of his ear on nine different occasions by six different surgeons.

6. That the following language of the United States Court of Appeals for the Second circuit in the case of Startz v. Cullen, 468 F.2d 560,561 (1972) defines the scope of authority of a federal court with respect to a state prisoner's complaints with respect to medical treatment:

* * *

"* * * However, the scope of the authority of a federal court is much narrower; it is confined to determining whether the medical treatment of the prisoner is so shocking as to constitute a denial of due process prohibited by the Fourteenth Amendment or a cruel and unusual punishment forbidden by the Eighth Amendment, selectively incorporated into the Fourteenth. Church v. Hegstrom, 416 F.2d 449 (2 Cir. 1969); United States ex rel. Hyde v. McGinnis, 429 F.2d 864 (2 Cir. 1970); Martinez v. Mancusi, 443 F.2d 921 (2 Cir. 1970), cert. denied, 401 U.S. 983, 91 S.Ct. 1202, 28 L.Ed.2d 335 (1971). * * * "

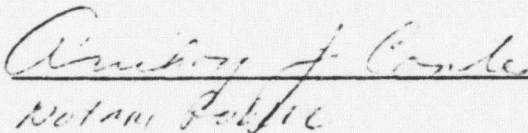
WHEREFORE, defendants respectfully request that their motion for summary judgment be granted.



TIMOTHY F. O'BRIEN

Sworn to before me this

8th day of January, 1976.


Notary Public

W. BRANDON MACOMBER, M.D.
MARK K. H. WANG, M.D.
F. STANLEY HOFFMEISTER, M.D., D.M.D.

PLASTIC AND RECONSTRUCTIVE
SURGERY
SURGERY OF THE HEAD AND NECK
MAXILLOFACIAL SURGERY AND
SURGERY OF THE HAND

1465 WESTERN AVENUE
ALBANY, NEW YORK 12203

TELEPHONE 438-4406

August 9, 1974

Ian T. Loudon, M.D.
Assistant Commissioner
for Health Services
State of New York
Dept. of Correctional Services
Dannemora, New York 12929


Re: Nathaniel Williams
#44849

Dear Dr. Loudon:

This is just to let you know on the occasion of our visit
at Dannemora I examined resident Nathaniel Williams #44849
on July 31, 1974.

As I indicated to you previously, I consider the reconstruction
of his ear as excellent. Resident Williams still complains of
some bulkiness in the area of previously transplanted rib
cartilage. There is indeed some bulkiness present there but
I feel that this is as far as we can go, and that no further
surgery is indicated.

Sincerely yours,


F. S. Hoffmeister, M.D.

FSH:do

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NATHANIEL WILLIAMS,

Plaintiff,

-against-

PETER PREISER, Commissioner of Correction
of the State of New York; J. EDWIN LA VALLEE
Superintendent of Clinton Correctional
Facility; and DR. F. STANLEY HOFFMEISTER,
1465 Western Avenue, Albany, New York,

AFFIDAVIT

Defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

F. STANLEY HOFFMEISTER, being duly sworn, deposes
and says:

1. I am a duly licensed physician of the State of
New York specializing in plastic surgery and was duly appointed
as an employee of the Department of Correctional Services as
a part-time physician effective July 27, 1967.

2. That I am familiar with the civil rights action
brought by Nathaniel Williams, an inmate confined in the
Clinton Correctional Facility, against Peter Preiser, former
Commissioner of Correctional Services of the State of New
York, J. Edwin LaVallee, Superintendent of Clinton Correctional
Facility and me in the United States District Court for the
Northern District of New York, bearing civil action file number
75 CV 529, wherein Mr. Williams alleges that he is presently
being denied necessary medical care and treatment by the
defendants therein named.

3. That based upon records maintained by the New York State Department of Correctional Services, as well as upon the personal knowledge of your deponent, inmate Williams, on September 4, 1969 while an inmate at Green Haven Correctional Facility, sustained an injury resulting in the loss of a portion of his external ear.

4. That commencing in November of 1970 stage reconstruction of Mr. Williams right ear has been carried out by plastic surgery consisting of nine surgical operations as follows: In November of 1970-right ear construction with cartilage graft was performed by Dr. Kirchner at Clinton Correctional Facility; in February of 1971-second stage reconstruction to right ear and split thickness graft was performed by Dr. Kirchner at Clinton Correctional Facility; in August of 1971-split thickness graft to right ear was performed by Dr. Agban at Clinton Correctional Facility; in December of 1971-revision of superior portion of cartilage graft was performed by Dr. Dubin at Clinton Correctional Facility; in June of 1972-thinning of right ear-cartilage graft was performed by Dr. Dubin at Clinton Correctional Facility; in September of 1972-revision of cartilage graft of right ear with excision of hypertrophic scar of ear was performed by Dr. Bass at Clinton Correctional Facility; in January of 1973-correction of deformity of right ear was performed by Dr. Bass at Clinton Correctional Facility; in October of 1973-revision of helical rim and post conchal cartilage graft - right exterior ear was performed by Dr. Saurwein at the Champlain Valley Physicians

Hospital Medical Center in Plattsburgh, New York; in February of 1974-thinning of cartilage of right ear was performed by your deponent at Clinton Correctional Facility.

5. That it is my opinion that the reconstruction of Mr. Williams right ear is excellent and that no further surgery, medical care or treatment is indicated or required.

6. That your deponent denies the allegation made by Mr. Williams in his complaint wherein Mr. Williams states that your deponent told plaintiff that he would not get any more surgery done unless he dropped his claims pending in the courts against prison officials.

F. Stanley Hoffmeister

F. STANLEY HOFFMEISTER

Sworn to before me this
10th day of December, 1975.

E. E. McHenry
Deputy, City of Albany, N.Y.

F

F

STATE OF NEW YORK--DEPARTMENT OF CORRECTIONAL SERVICES
CLINTON CORRECTIONAL FACILITY
LEGAL LETTER

Name... *U.S. District Court, Clerk..*
Street & No... *Northern District of New York*
City... *Utica* State *N.Y.* 13503.

When replying sign your full name and address
Give inmate's full name and number.

Box B
DANNEMORA, N. Y. 12929

Date *January 15, 1975*

U.S. District Court
Northern District of New York

Nathaniel Williams, Plaintiff
against

Peter Preiser, Commissioner of
Correction of the State of New York,
J. Edwin Lavallee, Superintendent
of Clinton Correctional Facility,
and Dr. F. Stanley Hoffmeister,
1465 Western Avenue,
Albany, New York.
Defendants

Affidavit of Service
75 Civ. 529

State of New York }
County of Clinton } ss:

Nathaniel Williams, being duly sworn, deposes and says:
That he has served a copy of the attached Affidavit in Reply
to the following:
Attorney General's office, The Capitol, Albany, N.Y.

Sworn to before me
this 1st day of June 1974

Respectfully Submitted

Nathaniel Williams
Plaintiff pro se #44849
Box B, Dannemora, NY.

27
Henry B. Bogan
Notary Public

U.S. District Court
Northern District of New York

(1)

Nathaniel Williams, Plaintiff
against
Peter Preiser, Commissioner of
Correction of the State of New York;
J. Edwin Lavalley, Superintendent
of Clinton Correctional Facility, and
Dr. F. Stanley Hoffmeister,
1465 Western Avenue,
Albany, New York.
Defendants

Affidavit in Reply
75 Civ. 529

State of New York
County of Clinton } ss:

Nathaniel Williams, being duly sworn, deposes and says:
That this is a reply to an affidavit in opposition to
Plaintiff's Civil Rights Complaint, filed by the assistant
attorney General of the Capitol, Albany, New York.
The assistant attorney General instant affidavit in
opposition is frivolous and utterly devoid of
substance.

Plaintiff prays that before this Court render summary
judgment as requested by the assistant attorney
General, Timothy F. Brien, in his motion made
returnable January 26, 1976, that it seriously
consider the following:

(A) That the past decade has produced more mal-
practice complaints and suits than at any other
time in history;

- (2.)
- (B) that most of those are against doctors rendering medical treatment or operations which have left the patient unsatisfied for various reason;
 - (C) that under substantial equality and fair process, Plaintiff as a pauper should have that same right to equal protection of law that other with means do enjoy, especially since a part of the body is involved;
 - (D) that although nine (9) operations were performed on the ear and Dr. F. Stanley Hoffmeister feels that no further surgery is required, there should be another professional opinion other than a not interested surgeon, just because Plaintiff is confined in State Prison.
 - (E) that this examination should take place outside of the dominated police atmosphere at Clinton Correctional Facility;
 - (F) that the Honorable Judge also have the opportunity to personally view the plaintiff's injury as alleged;
 - (G) that the damages done to Plaintiff's ear and head goes far beyond physical hurt and reaches to mental harm and anguish because of the not fixed ear so that glasses can be worn properly and because of the adverse conditions that Plaintiff has suffered because of the ear and head injury and the complaint thereof;

(H) that it is well established that when an inmate reaches to file a complaint against an official of Prison or its personnel there is punishment dealt out in many forms shocking to the intelligence, as to constitute a denial of due process prohibited by the 14th Amendment and Cruel and unusual punishment forbidden by the 8th Amendment, it is also established through the mechanics of war that mental to break one's spirit and mind;

(I) that your plaintiff alleges the very same mental torture is being effectually applied in the instance and because of that and because of the other adversity extending from a Complaint of being beaten in the Clinton prison Bay when handcuffed for no apparent legitimate reason, the hearing is urgently requested to resolve the issues, and Plaintiff further requests that he be moved to the federal prison in Manhattan because the State prison guards and officials are becoming more of a threat to him, as they were to Martin Luther King; and

(J) that defendants Preiser and Levallee although relying on the judgment of Dr. Hoffmeister as set forth in his letter to Dr. London, did not make any medical decisions, they are the Plaintiff's legal keepers and responsible for his safety which includes the right to be safe from incompetent operations from Doctors

(4.)

retained of those same persons who are the legal keepers of Plaintiff, which are necessarily implicated as a matter of state law and cannot contradict such without releasing Plaintiff from their detention, and

- (K) that it is well establish that the Assistant Attorney General now want this Court to believe that defendant Hoffmeister didn't denied Plaintiff of further surgery when defendant Hoffmeister have gotten Plaintiff ready for his surgery at Clinton on July 31, 1974, and later told Plaintiff, he would not receive any more surgery done not until he dropped the charges pending in the Court against prison officials because defendant Hoffmeister have a part-time job working for the State since Feb 7. Wherefore, it is respectfully requested that this Court seriously consider Plaintiff facts further because the defendant's affidavit is frivolous because defendant Hoffmeister failure to provide medical care need by Plaintiff after at first advised Plaintiff that further surgery was necessary and because the defendant had said to produce the photographed slides taken of Plaintiff to show this Court how Plaintiff ear and head look after nine (9) unsuccessful operations has been performed on Plaintiff.

Sworn to before me

This 15th day of June 1976

Thom J. Boyle
Notary Public

Respectfully Submitted

Nathaniel Williams

Plaintiff prose #144849

Box B, Kennerman, N.Y.

15-10-509

(6)

*Affidavit
in Reply*

U. S. DISTRICT COURT
N. D. OF N. Y.
FILED

JAN 21 1976

AT _____ O'CLOCK _____ M.
J. R. SCULLY, Clerk
UTICA *J*

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NATHANIEL WILLIAMS,

Plaintiff,

against

PETER PREISER, Commissioner of Correction
of the State of New York; J. EDWIN
LA VALLEE, Superintendent of Clinton
Correctional Facility; and DR. F. STANLEY
HOFFMEISTER, 1465 Western Avenue, Albany,
New York,

75-CV-529

Defendants.

EDMUND PORT, Judge

APPEARANCES:

HON. LOUIS J. LEFKOWITZ
Attorney General of the State of
New York
The Capitol
Albany, New York 12224
Attorney for Defendants

TIMOTHY F. O'BRIEN
Assistant Attorney General
Of Counsel

MR. NATHANIEL WILLIAMS
#44849
Box B, Clinton Correctional Facility
Dannemora, New York 12929
Pro se

Memorandum-Decision and Order

By Memorandum-Decision and Order dated November 4, 1975 in the above captioned case, I directed that the civil rights complaint of the plaintiff's be filed and that the named defendants be served. The defendants, by notice of motion dated January 7, 1976, have moved for summary judgment; an affidavit of service on the plaintiff by mail is annexed to the motion papers, showing that on January 8, 1976, the papers were mailed to plaintiff. The motion was made returnable on January 26, 1976 at Utica, New York; at that time, the motion was submitted for decision without argument. The plaintiff has to date failed to submit any papers or affidavits in opposition to

the motion.

The crux of plaintiff's complaint is that he is being denied further treatment to complete the reconstruction of his ear. He alleges that Dr. Hoffmeister told him that he would not receive any further treatment until he dropped certain claims which were then pending against prison officials. Annexed to the motion for summary judgment is an affidavit from the defendant Dr. F. Stanley Hoffmeister; Dr. Hoffmeister's affidavit states: (1) the plaintiff sustained an injury to his right ear on September 4, 1969;

(2) that since November of 1970, the plaintiff has had nine surgical operations to reconstruct his right ear;

(3) that the reconstruction of plaintiff's right ear is excellent and that no further surgery, medical care or treatment is indicated or required; and

(4) that at no time did Dr. Hoffmeister ever tell plaintiff that he would not get any further surgical treatment done unless he dropped his claims pending in the state courts against prison officials.

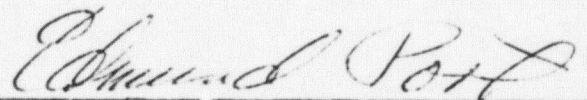
Also annexed to the moving papers is a copy of a letter dated August 9, 1974 from Dr. Hoffmeister to Ian T. Loudon, M.D., Assistant Commissioner for Health Services of the State of New York. The letter informs Dr. Loudon that Dr. Hoffmeister examined the plaintiff at Dannemora on July 31, 1974 and that he [Dr. Hoffmeister] considered the reconstruction of plaintiff's ear to be excellent and that he [Dr. Hoffmeister] felt "that this is as far as we can go, and that no further surgery is indicated." As an aside, Dr. Hoffmeister's letterhead demonstrates that he apparently specializes in plastic and reconstructive surgery, and surgery of the head and neck.

As noted earlier herein, the plaintiff has failed to controvert the allegations made in Dr. Hoffmeister's affidavit and has failed to oppose this motion for summary judgment.

The motion for summary judgment with the annexed affidavits demonstrates to my satisfaction that, far from being deprived of proper medical treatment, the plaintiff has been afforded extensive and comprehensive medical care resulting in what is termed by a plastic surgery specialist as an "excellent" reconstruction of his ear. Absent herein are "barbarous acts" that "shock the conscience." Church v. Hegstrom, 416 F.2d 449, 451 (2d Cir. 1969), and United States ex rel. Hyde v. McGinnis, 429 F.2d 864 (2d Cir. 1970).

The allegations of the complaint will not serve to raise an issue in the face of the factual allegations submitted in support of the motion. See, e.g., Cowen v. New York Stock Exchange, 256 F.Supp. 462 (N.D.N.Y. 1966) aff'd 371 F.2d 661 (2d Cir. 1967). The movants' uncontradicted affidavits show that there are no genuine issues as to any material facts. Accordingly, the defendants' motion for summary judgment will be granted, and it is

ORDERED, that judgment be entered herein in favor of the defendants dismissing the complaint of the plaintiff.


United States District Judge

Dated: January 29, 1976
Auburn, New York.

Copy received

5/16/76 5:15 pm

Wendell C. Hughes
AAG